

No. 23-15992

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FEDERAL TRADE COMMISSION,
Plaintiff-Appellant,

v.

MICROSOFT CORP., and
ACTIVISION BLIZZARD, INC.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of California
No. 3:23-cv-2880
(Hon. Jacqueline Scott Corley, U.S. Distr. J.)

**THE FEDERAL TRADE COMMISSION'S
MOTION TO FILE DOCUMENTS UNDER
SEAL PURSUANT TO CIRCUIT RULE 27-13**

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MOTION TO FILE DOCUMENTS UNDER SEAL

Appellant, the Federal Trade Commission (FTC), moves pursuant to Circuit Rule 27-13 for leave to file under seal its Opening Brief and Volume 3 of appellant's excerpts of records (attached hereto as Exhibits A & B, respectively).

While courts apply a "strong presumption in favor of access" to court records, "[i]n general, 'compelling reasons' sufficient to outweigh the public's interest in disclosure and justify sealing court records exist when such 'court files might have become a vehicle for improper purposes,' such as the use of records to ... release trade secrets."

Kamakana v. City and Cty. Of Honolulu, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)).

Compelling reasons support granting the motion. The FTC's Opening Brief and Volume 3 of appellant's excerpts of records contain confidential, competitively sensitive business information provided by defendants Microsoft Corp. and Activision Blizzard, Inc., and by third parties, including NVIDIA Corporation, Sony Interactive Entertainment, and others, during the course of the FTC's investigation

of defendants' proposed merger. Microsoft, Activision, Nvidia, and Sony designated certain of this information as confidential pursuant to Section 21 of the FTC Act, 15 U.S.C. § 57b-2. Other portions of the Opening Brief and Volume 3 of appellant's excerpts of records contain information that was obtained during the course of litigation discovery in *In the matter of Microsoft Corp. and Activision, Blizzard, Inc.*, FTC Docket No. 9412, before the United States of America Federal Trade Commission Office of Administrative Law Judges, and that the producing party has designated as "Confidential" pursuant to the Protective Order Governing Confidential Material entered on December 9, 2022.

Because this Court may benefit from review of the unredacted material in the Opening Brief and Volume 3 of appellant's excerpts of records, the FTC asks for leave to file its Opening Brief and Volume 3 of appellant's excerpts of records under seal.

A redacted version of the FTC's Opening Brief will be filed on the public record upon receipt of the Court's instructions. Moreover, the portions of the Opening Brief sought to be redacted are highlighted in the unredacted version filed herewith as Exhibit A.

CONCLUSION

For the foregoing reasons, the FTC asks that its Opening Brief and Volume 3 of appellant's excerpts of records be filed under seal.

Respectfully submitted,

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General Counsel

MARIEL GOETZ
Acting Director of Litigation

Dated: August 9, 2023

/s/ Imad Abyad
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CERTIFICATE OF COMPLIANCE

I certify that the foregoing motion complies with the length limits and format requirements in Fed. R. App. P. 27(d) and Circuit Rule 27-1, because it does not exceed 20 pages, and has been prepared in proportionally spaced typeface using Microsoft Word 2010 in 14-point Century Schoolbook font.

Date: August 9, 2023

/s/ Imad Abyad
IMAD D. ABYAD
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FEDERAL TRADE COMMISSION

CERTIFICATE OF SERVICE

I certify that on August 9, 2023, I filed the foregoing motion with the Court's appellate CM/ECF system. Counsel for defendants-appellees are registered users of the Court's appellate CM/ECF system. I further certify that an electronic copy of the foregoing was emailed to counsel for defendants-appellees at their registered email addresses.

Date: August 9, 2023

/s/ Imad Abyad
IMAD D. ABYAD
Attorney
FEDERAL TRADE COMMISSION

EXHIBIT A

(APPELLANT'S OPENING BRIEF)
(FILED AS A SEPARATE ATTACHMENT)

EXHIBIT B

(VOLUME 3 OF APPELLANT'S EXCERPTS OF RECORDS)
(FILED AS A SEPARATE ATTACHMENT)